File No. Electricity Supply II/49 (N)
Legal Department—I
B BRANCH

Subject:—

Notifications under the Electricity Supply Act 1948

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P-6
1949

File No. Electricity Supply II/49(N)
228-B

Gen. 194

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Legal Department.

revised draft of the proposed letter is sent herewith.

Sd/ 10-2

Additional Secretary to Government.

U.R. to P.W.D. , No. 1643 , dated the 11th February 1949.

S.C. 2/6

8/6

No. 6331/36 - El.

Public Works Department.

Bombay Castle, February 1949.

To

The Secretary
The Association of Electrical
Undertakings, Bombay Province
Allahabad Bank Buildings.
Apollo Street.
B O M B A Y.

Subject .- Surcharge.

Dear Sir,

I am to refer to the correspondence ending with your letter No. AEU/24/172/49 dated the 5th January 1949, on the above subject, and to state thay the matter has been explained fully to the representatives of your Association at the time of their discussion with the Honourable Minister forPublic Works on the4th January 1949.

2. The provisions of the Sixth Schedule andthe Table appended to the Seventh Schedule ofthe Electricity (supply) Act, 1948, (LIV of 1948) are according to section 57(1) of the said Act deemed to be incorporated in thelicence of every licensee, not being a local authority, from the date of the commencement of the licensee's next succeeding year of account andfrom such date, the licensee has to comply therewith accordingly. In case any licensee finds that he is not getting a reasonable return with his existing charges for the supply ot electricity, he can, after theclose of his current financial year, approach Government under section 57(2)(a), with a request for

the appointment of a rating committee. Government do not think it worth while to persue the question of undertaking Provincial Legislation for revising the existing maximum rates of surcharge or to change the present mode of assessment of surcharge. since in view of the provisions already contained in the Electricity (Supply) Act, 1948, it is not likely that the Governor General will give his assent to such legislation. Government have, therefore, decided notto undertake any legisaation for the purpose in view. If necessary the licensees may after the close of the financial year approach Government for appointment ofa rating committee under section 57 of theElectricity (Supply) Act, 1948.

Yours faithfully,

Secretary to Government.

S.C. 2/6.

Legal Department.

The first question for consideration is whether under ~~ex~~ clause 1 of Schedule VI to the Electricity (Supply) Act, 1948, a licensee can charge rates higher than themaximum fixed in thelicence granted to him under the Indian Electricity Act, 1910. Mr. M.C. Atal Setalvad has given his opinion on a case stated to him on behalf ofthe Matheran Electricity Supply Co. Mr. Setalvad states that clause 1 and other clauses or the Sixth Schedule to the Electricity (Supply) Act, 1948 are to be read as a part of the licence andany provision. in thelicence inconsistent with them is to be regarded as of no effect . He is of opinion that "the whole scheme of section 57 and the Sixth Schedule is to assure that the rates of the licensee should by periodical version be kept so as not to exceed the amount of reasonabl return and that it would be in consistant with the principle and provisions of section 57 and the Sixth Schedule to keep alive a clause in a licence which would during the currency of the licence keep the licensee bound down to rates below the amount of reasonable return and therefore mechanically unsound."

2. The above view appears to be correct. Section 23 ofthe Indian Electricity Act, 1910 provides that a licensee can make charges not exceeding thelimits imposed by thelicense; Under para XI of the Schedule to the Act the prices charged by the licensee for energy cannot exceed the maximum fixed by his licence. The Schedule to the Act of 1910 is to be read

as forming part of any licence. But these provisions of the Act of 1910 are to be of no effect if they are inconsistent with the provisions of Schedule VI to the Electricity (Supply) Act, 1948. Sub-section (1) of section 70 of the Act of 1948 makes it clear that no provision of theAct of 1910 or any instrument or rule having effect by virtue of the saidlaw have any effect, if it is inconsistnet with theprovisions of theAct of 1948. It is true that theproviso to the sub-section gives power to the Provincial Government to granta licence not inconsistnet with the provisions of the Act of 1910 to ahy person on such terms and conditions as the Provincial Governmentmay think fit. But as stated above, section 57(1) provides that the provisions of the Sixth ~~of the Act of 1948~~ shall be in addition Schedule shall be deemed to have been incorported in every licence. It is true that sub-section (2) of section 70 provides that the provisions of the Act of 1948 shall be in addition to and not in derogation of the Act of 1910. But this sub-section is conditioned by the words "save as otherwise provided in this Act. "section 70 has therefore, to be read subject to and in conjunction with section 57(1). The result is that as pointed by Mr. Setalvad the provisions of para XI of the Schedule to the Act of 1910 or a clause in a licence inserted in accordance with that paragraph is superseded by the Sixth Schedule. Under the Act of 1910 it was left to the Provincial Government to fix the maximum of the charges and the Maximum so fixed was liable to be altered on the recommendations of the Advisory board. These provisionsappear to have been superseded by the provisions in the Sixth Schedule which ensure to